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Attorneys for Thrifty Payless, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

SURINDERJIT SINGH BRAR and BALVIR KAUR)
BRAR, husband and wife,)
)
Plaintiffs,)
)
v.)
)
THRIFTY PAYLESS, INC., a California corporation;)
and FIRST AMERICAN TITLE INSURANCE)
COMPANY, a California corporation,)
)
Defendant.)

Case No.

**NOTICE OF REMOVAL OF CIVIL
ACTION**

The Defendant, Thrifty Payless, Inc., states as follows:

1. Plaintiffs filed a Complaint in the Superior Court of the State of Washington for King County under Cause No. 08-2-39004-7 SEA on November 13, 2008. The matter in controversy in the case exceeds the sum or value of \$75,000 exclusive of interests and costs, and is between citizens of a state and citizens of a foreign state. Removal jurisdiction exists pursuant to 28 U.S.C. § 1332(a).

2. Plaintiffs allege that they are residents of Canada. Defendant Thrifty Payless, Inc. is a California corporation with its principal place of business in California. Defendant First American Title Insurance Company is a California corporation with its principal place of business in California. A copy

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1 of the initial pleading setting forth the claim for relief upon which the action is based was first received
2 by Thrifty Payless, Inc. through its counsel, on November 14, 2007.

3 3. Plaintiffs' Complaint alleges that plaintiffs are entitled to relief in sums in excess of the
4 jurisdictional amount. Therefore, diversity jurisdiction is established. A copy of the summons and
5 complaint received by defendant Thrifty Payless is attached.

6 WHEREFORE, Thrifty Payless, Inc. requests that plaintiffs' state court action be removed from
7 the Superior Court of the State of Washington, King County, to this District Court.
8

9 DATED this 9th day of December, 2008.

10 ROHDE & VAN KAMPEN PLLC
11

12 /s/ Delbert D. Miller

13 Delbert D. Miller, WSBA # 1154

14 **Attorneys for defendant Thrifty Payless, Inc.**
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Declaration of Service

I hereby declare, under penalty of perjury under the laws of the United States, that I have made service of the foregoing pleading or notice on the party/ies listed below in the manner indicated on the date of this Declaration set forth below:

Melanie A. Leary
Demco Law Firm, P.S.
5224 Wilson Avenue South, Suite 200
Seattle, WA 98118
Telephone: 206-203-6000
Fax: 206-203-6001
Email: mleary@demcolaw.com
Attorney for Plaintiffs

<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Overnight Courier
<input checked="" type="checkbox"/>	Email --

DATED this 9th day of December, 2008.

/s/ Delbert D. Miller

ROHDE & VAN KAMPEN PLLC
1001 Fourth Avenue, Suite 4050
Seattle, Washington 98154-1000
Telephone: (206) 903-8082
Fax: (206) 405-2825

JEFFREY M. RAMSDELL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

SURINDERJIT SINGH BRAR and BALVIR
KAUR BRAR, husband and wife,

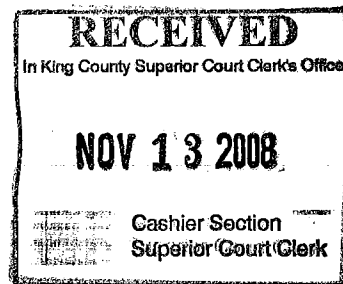
Plaintiffs,

v.

THRIFTY PAYLESS, INC., a California
Corporation; and FIRST AMERICAN TITLE
INSURANCE COMPANY, a California
Corporation,

Defendants.

NO. 08-2-39004-7 SEA
SUMMONS



TO: Defendant Thrifty Payless, Inc.

A lawsuit has been started against you in the above-entitled court by plaintiffs, Surinderjit Singh Brar and Balvir Kaur Brar. Plaintiffs' claims are stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the persons signing this summons within twenty (20) days after service of this summons, excluding the day of service, if you are served within the State of Washington, or within sixty (60) days after service of this summons, excluding the day of service, if you are served outside the State of Washington. If you do not respond, a

SUMMONS- 1

COPY

DEMCO LAW FIRM, P.S.
5224 WILSON AVE. S., SUITE 200
SEATTLE, WASHINGTON 98118
(206) 203-6000
FAX: (206) 203-6001

1 default judgment may be entered against you without notice. A default judgment is one where
2 plaintiffs are entitled to what they ask for because you have not responded. If you serve a notice
3 of appearance on the undersigned persons, you are entitled to notice before a default judgment
4 may be entered.

5 Any response or notice of appearance which you serve on any party to this lawsuit must
6 also be filed by you with the court within 20 days after the service of summons, excluding the
7 day of service.
8

9 You may demand that the plaintiffs file this lawsuit with the court. If you do so, the
10 demand must be in writing and must be served upon the persons signing this summons. Within
11 fourteen (14) days after you serve the demand, the plaintiffs must file this lawsuit with the court,
12 or the service of this summons and complaint will be void.

13 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
14 that your written response, if any, may be served on time.

15 THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
16 State of Washington.
17

18 DATED this 12th day of November, 2008.

19 DEMCO LAW FIRM, P.S.

20
21 By Melanie A. Leary
22 Melanie A. Leary, WSBA #21050-
23 Attorneys for Plaintiffs
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7 **JEFFREY M. RAMSDELL**
8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
9 **IN AND FOR THE COUNTY OF KING**

10 SURINDERJIT SINGH BRAR and BALVIR
11 KAUR BRAR, husband and wife,

12 Plaintiffs,

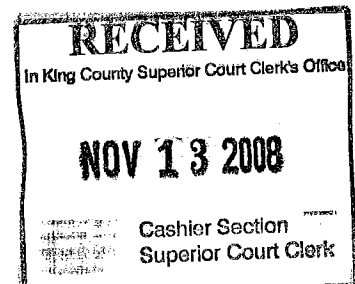
13 v.

14 THRIFTY PAYLESS, INC., a California
15 Corporation; and FIRST AMERICAN TITLE
16 INSURANCE COMPANY, a California
17 Corporation,

18 Defendants.

NO. **08-2-39004-7 SEA**

COMPLAINT FOR BREACH OF
CONTRACT AND CONVERSION



19 COME NOW Plaintiffs Surinderjit Singh Brar and Balvir Kaur Brar and allege as
20 follows:

21 **I. PARTIES**

22 1. Plaintiffs Surinderjit Singh Brar and Balvir Kaur Brar are husband and wife and
23 residents of Canada.

24 2. Defendant Thrifty Payless, Inc. ("Payless") is a California corporation that does
25 business in King County, Washington.

26 3. Defendant First American Title Insurance Company ("First American") is a
California corporation that does business in King County, Washington.

COPY

II. JURISDICTION AND VENUE

4. This court has jurisdiction over the parties and the claims, and venue in this court is proper.

III. FACTUAL ALLEGATIONS

5. Defendant Payless owns the commercial real property commonly known as 24044 104th Avenue in Kent, King County, Washington ("the subject property").

6. On or about November 30, 2007, Plaintiffs entered into a Real Property Purchase and Sale Agreement ("Agreement") to buy the subject property from Defendant Payless. Amarjeet Singh and Jaswinder Brar were also named as purchasers in the Agreement.

7. In accordance with the Agreement, Plaintiffs deposited \$100,000.00 in earnest money funds to Defendant First American, the closing agent for the subject transaction.

8. On or about January 28, 2008, the parties executed an addendum to the Agreement.

9. Pursuant to the addendum, the original \$100,000.00 of earnest money was released by Defendant First American to Defendant Payless, and Plaintiffs deposited an additional \$300,985.00 in earnest money funds with Defendant First American.

10. The Agreement required Defendant Payless, among other things, to maintain the property in the same condition as prior to the agreement.

11. Defendant Payless's performance of each and every material undertaking in the agreement was an express condition precedent to closing.

12. Defendant Payless failed to perform its material obligations, including the obligation to maintain the property.

13. The condition precedent to closing was neither satisfied nor waived.

14. Defendant Payless failed to tender performance in accordance with the terms of the Agreement.

15. The failure by Defendant Payless to perform and tender performance constitutes a material breach of the Agreement.

1 16. Defendant Payless has failed to return the Plaintiffs' \$100,000.00 despite Plaintiffs'
2 demand for its return.

3 17. Defendant Payless has demanded that Defendant First American pay the remaining
4 \$300,985.00 to Defendant Payless.

5 18. Defendant First American is still holding Plaintiffs' \$300,985.00 in escrow and has
6 refused to return it to Plaintiffs despite Plaintiffs' demand for its return.

7 **IV. CAUSES OF ACTION**

8 **BREACH OF CONTRACT**

9 14. Defendant Payless materially breached the Agreement.

10 15. Plaintiffs have been damaged by Defendant Payless's breach of the Agreement and
11 are entitled to damages consisting of the \$400,985.00 in earnest money, together with prejudgment
12 interest, attorney's fees and costs, and such additional damages as may be proven.

13 **CONVERSION**

14 16. Defendant First American is holding \$300,985.00 of Plaintiffs' funds.

15 17. Despite demand, Defendant First American has neither returned Plaintiffs' funds nor
16 interpled the funds.

17 18. Defendant First American, therefore, has converted Plaintiffs' funds in the amount
18 of \$300,985.00.

19 **RELIEF REQUESTED**

20 Plaintiffs request that the Court enter judgment as follows:

21 1. Awarding Plaintiffs judgment against Defendant Payless in the amount of
22 \$100,000.00, prejudgment interest, attorney fees and costs, and such additional relief as may be
23 warranted.

24 2. Awarding Plaintiffs judgment against Defendant Payless and Defendant First
25 American in the amount of \$300,985.00, prejudgment interest, attorney fees and costs, and such
26 additional relief as may be warranted.

1 3. Awarding Plaintiffs such other and further relief as may be just and equitable.
2

3 DATED this 12th day of November, 2008.
4

5 DEMCO LAW FIRM, P.S.

6 By Melanie A. Leary
7 Melanie A. Leary, WSBA #21050
8 Attorneys for Plaintiffs
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

SURINDERJIT S. BRAR, ET ANO

vs

THRIFTY PAYLESS, INC., ET AL

Plaintiff(s)

Defendant(s)

NO. 08-2-39004-7 SEA

Order Setting Civil Case Schedule (*ORSCS)

ASSIGNED JUDGE Ramsdell 9

FILE DATE: 11/13/2008

TRIAL DATE: 05/10/2010

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

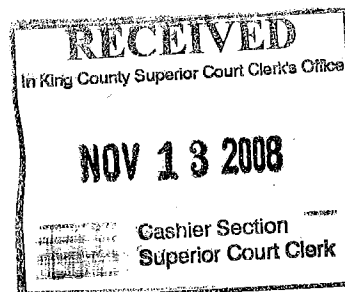
I. NOTICES

NOTICE TO PLAINTIFF: The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the **Schedule** on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

"I understand that I am required to give a copy of these documents to all parties in this case."

Print Name

Sign Name



Order Setting Civil Case Schedule (*ORSCS)

REV. 08/08 1

I. NOTICES (continued)

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] -- especially those referred to in this **Schedule**. In order to comply with the **Schedule**, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLCR 26], and for meeting the discovery cutoff date [See KCLCR 37(g)].

CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$200 must be paid when any answer that includes additional claims is filed in an existing case.

KCLCR 4.2(a)(2)

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this **Schedule** are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule **if the case is subject to mandatory arbitration** and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. **Any party filing a Statement must pay a \$220 arbitration fee.** If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

King County Local Rules are available for viewing at www.kingcounty.gov/kcsc.

II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Thu 11/13/2008	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. \$220 arbitration fee must be paid	Thu 04/23/2009	*
DEADLINE to file Confirmation of Joinder if not subject to Arbitration. [See KCLCR 4.2(a) and Notices on Page 2].	Thu 04/23/2009	*
DEADLINE for Hearing Motions to Change Case Assignment Area. [See KCLCR 82(e)]	Thu 05/07/2009	
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(b)].	Mon 12/07/2009	
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLCR 26(b)].	Tue 01/19/2010	
DEADLINE for Jury Demand [See KCLCR 38(b)(2)].	Mon 02/01/2010	*
DEADLINE for Setting Motion for a Change in Trial Date [See KCLCR 40(d)(2)].	Mon 02/01/2010	*
DEADLINE for Discovery Cutoff [See KCLCR 37(g)].	Mon 03/22/2010	
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLCR 16(b)].	Mon 04/12/2010	
DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLCR 4(j)].	Mon 04/19/2010	
DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(2)].	Mon 04/19/2010	*
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56].	Mon 04/26/2010	
Joint Statement of Evidence [See KCLCR (4)(k)].	Mon 05/03/2010	*
DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file Proposed Findings of Fact and Conclusions of Law with the Clerk)	Mon 05/03/2010	*
Trial Date [See KCLCR 40].	Mon 05/10/2010	

III. ORDER

Pursuant to King County Local Civil Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Civil Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action **must** serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 11/13/2008



PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

APPLICABLE RULES: Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

CASE SCHEDULE AND REQUIREMENTS

Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.

A. Joint Confirmation regarding Trial Readiness Report:

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment, etc.).

The form is available at <http://www.kingcounty.gov/courts/superiorcourt.aspx>. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding said report.

B. Settlement/Mediation/ADR

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. **FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

C. Trial: Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website <http://www.kingcounty.gov/courts/superiorcourt.aspx> to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

MOTIONS PROCEDURES

A. Noting of Motions

Dispositive Motions: All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Nondispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Emergency Motions: Under the court's local civil rules, emergency motions will be allowed only upon entry of an Order Shortening Time. However, emergency discovery disputes may be addressed by telephone call and without written motion, if the judge approves.

B. Original documents/working copies Filing of Documents

All original documents must be filed with the Clerk's Office.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator.

Original Proposed Order: Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order.

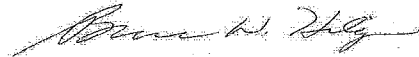
Presentation of Orders: All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. **If final order and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.**

C. Form

Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PEITITONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

8 **IN AND FOR THE COUNTY OF KING**

9 SURINDERJIT SINGH BRAR and BALVIR
10 KAUR BRAR, husband and wife,

11 Plaintiffs,

12 v.

13 THRIFTY PAYLESS, INC., a California
14 Corporation; and FIRST AMERICAN TITLE
15 INSURANCE COMPANY, a California
16 Corporation,

17 Defendants.

NO. 08-2-39004-7 SEA

ACCEPTANCE OF SERVICE

17 I, John P. Dahl, hereby acknowledge receipt of a copy of the Summons, Complaint for
18 Breach of Contract and Conversion, and Order Setting Civil Case Schedule for the
19 above-captioned matter, and I accept service of the same on behalf of First American Title
20 Insurance Company.

21 DATED this _____ day of _____, 2008.

22 FIRST AMERICAN TITLE INSURANCE CO.

23
24 By _____
25 John P. Dahl, WSBA #
26 Attorneys for Defendant First American Title